International Brotherhood of Electrical Workers, Local 98, AFL–CIO *and* The Telephone Man, Inc. *and* Ernest Bock & Sons, Inc. *and* Delran Builders Company, Inc. Cases 4–CB–7876, 4–CC–2154, 4–CC–2178, 4–CC–2175, and 4–CC–2177

February 12, 1999

DECISION AND ORDER

BY MEMBERS FOX, LIEBMAN, AND BRAME

On July 7, 1998, Administrative Law Judge Margaret M. Kern issued the attached decision. The Respondent filed exceptions and a supporting brief, and the General Counsel filed a brief supporting the judge's decision and order and an answering brief.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the decision and the record in light of the exceptions and briefs and has decided to affirm the judge's rulings, findings,[1] and conclusions and to adopt the recommended Order.

In affirming the judge's unfair labor practice findings, we do not rely on the judge's suggestion in the "Analysis" part of section III,B of her decision that there must be an allegation or evidence of misuse of the reserved neutral gate on the Sears Hardware project to justify the Respondent's having an observer at that gate.[2] We do, however, agree with the judge that the overall conduct of the Respondent's representative, James Farrow, acting as the Respondent's "observer" at the neutral gate on this project, could reasonably be construed as "signal picketing"[3] undertaken for an impermissible secondary object.

As the judge found, the Respondent and Farrow previously had demonstrated a secondary objective at this project when Farrow and several others picketed for several hours at the neutral gate on October 24, 1997, after receiving notice that a reserved gate system had been established. Starting on October 27, Farrow stationed himself on a concrete divider between the entrance and exit sides of the reserved neutral gate, wearing an "observer" sign that conveniently flipped over from time to time, revealing the identical message directed at the primary employer that was used in picketing at the primary gate. According to the uncontradicted testimony of Job Superintendent Glenn Lindquist, when this happened, that message would "show itself to everyone else entering that area." See *Sheet Metal Workers Local 19 (Delcard Associates),* 316 NLRB 426, 437–438 (1995) (alleged "observers" at neutral gate dispensed with "observer" language on sign and, at times, displayed conventional protest language written on other side of sign). In the middle of the gate, where he had stationed himself, Farrow was well positioned to talk to employees as they approached to enter the gate, and on at least one occasion, he conversed with employees of neutral employer Salvino Steel & Iron Works, who then turned away without reporting to work on the project.[4] On yet another occasion, on November 11, several pickets walked slowly from the primary gate to the neutral gate, spoke with Farrow (who was stationed in his usual location there, wearing his observer sign), turned around, and then slowly walked back to the primary gate. In these circumstances, we find that Farrow was not merely a benign observer but rather was engaged in impermissible signal picketing at the neutral gate.

ORDER

The National Labor Relations Board adopts the recommended Order of the administrative law judge and orders that the Respondent, International Brotherhood of Electrical Workers, Local 98, AFL–CIO, Philadelphia, Pennsylvania, its officers, agents, and representatives, shall take the action set forth in the Order.

Carmen P. Cialino, Jr., Esq. and *Andrew Brenner, Esq.,* for the General Counsel.

Richard C. McNeill Jr., Esq., and *Nancy A. Walker, Esq*., for Respondent.

Lawrence C. Coburn, Esq., for the Charging Party *Delran Builders Company, Inc.* and for *Granahan Electrical Contractors, Inc.*

DECISION

STATEMENT OF THE CASE

MARGARET M. KERN, Administrative Law Judge. This case was tried before me in Philadelphia, Pennsylvania, on December 17 and 18, 1997.[1] A consolidated complaint was issued in Cases 4–CB–7876 and 4–CC–2154 on August 21 based on unfair labor practice charges filed on May 8 by The Telephone Man, Inc. (TTM) against the International Brotherhood of Electrical Workers, Local 98, AFL–CIO (the Union or Respondent or Local 98). On October 16, a complaint was issued in Case 4–CC–2175 based on an unfair labor practice charge filed on October 2 by Ernest Bock & Sons, Inc. (Bock)

[1] The Respondent has excepted to some of the judge's credibility findings. The Board's established policy is not to overrule an administrative law judge's credibility resolutions unless the clear preponderance of all the relevant evidence convinces us that they are incorrect. *Standard Dry Wall Products,* 91 NLRB 544 (1950), enfd. 188 F.2d 362 (3d Cir. 1951). We have carefully examined the record and find no basis for reversing the findings.

In addition, the Respondent asserts that the judge's rulings, findings, and conclusions demonstrate bias and prejudice. On careful examination of the judge's decision and the entire record, we are satisfied that the Respondent's contentions are without merit.

[2] Member Brame notes that a lack of evidence that the reserved gate has been misused is relevant in determining whether a union has an unlawful objective in picketing under the Board's standards articulated in *Sailors' Union of the Pacific (Moore Dry Dock Co.),* 92 NLRB 547, 549 (1950).

[3] "Signal picketing" is the term used to describe activity short of a true picket line that acts as a signal to neutrals that sympathetic action on their part is desired by the union. *Iron Workers Local 433 (R. F. Erectors) v. NLRB*, 598 F.2d 1154, 1158 fn. 6 (9th Cir. 1979).

[4] The record does not show that Farrow could not have carried out his observer function in some place other than the middle of the gate area.

[1] All dates are in 1997 unless otherwise indicated.

against Respondent. On November 5, a complaint was issued in Case 4–CC–2177 based on an unfair labor practice charge filed on October 27 by Delran Builders Company, Inc. (Delran) against Respondent.[2] On November 25, a complaint was issued in Case 4–CC–2178 based upon another unfair labor practice charge filed on October 29 by TTM against Respondent.[3] Timely answers were filed to the complaints and orders consolidating the complaints for hearing were issued by the Regional Director.

The parties stipulated that the following named individuals are agents of Respondent within the meaning of the Act: John Dougherty, Edward Coppinger, James Farrow, Harry Foy, James Mink, Timothy Browne, and Michael Hnatowsky.

FINDINGS OF FACT

I. JURISDICTION

The parties stipulated and I find that TTM, Delran, Ron Carter & Associates, Inc. (Carter Electric), Granahan Electrical Contractors, Inc. (Granahan), and TCG Delaware Valley, Inc. (TCG) are each employers engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

II. LABOR ORGANIZATION STATUS

Respondent admits, and I find, that it is a labor organization within the meaning of Section 2(5) of the Act.

III. ALLEGED UNFAIR LABOR PRACTICES

A. The Telephone Man

1. Background

TTM is engaged in the business of supplying and installing telecommunications and data systems in and about the city of Philadelphia. Samuel Schetrompf is TTM's owner and chief executive officer. For approximately 10 years, TTM has performed cabling and installation work for TCG, a federally licensed local exchange carrier.[4] TTM's employees are represented by the International Brotherhood of Electrical Workers, Local 1448, AFL–CIO (Local 1448) with whom TTM has had a collective-bargaining relationship since 1991. TCG's employees are not represented by a labor organization. Respondent's primary dispute is with TTM whose employees are represented by a rival sister local. See *Hoeber v. IBEW Local 98*, 964 F.Supp. 176 (E.D. Pa. 1997). TCG, whose employees are not represented by a union, is a neutral to the dispute.

2. November 1996: TCG's meeting at Respondent's training center

In November 1996, TCG managers, including Richard Hicks, director of outside plant engineering, were invited to Respondent's training center to discuss, inter alia, TCG's use of Local 98 contractors. During the course of the tour, Edward Coppinger, Respondent's business agent and executive board member, told Hicks that Local 98 had a number of complaints about TTM. Coppinger stated that TTM was "dirty," did not pay its employees properly and was not properly licensed to do business. According to Hicks, Coppinger stated that TCG should not be doing business with TTM, but rather should be doing business with companies with whom Local 98 felt comfortable. Hicks denied that he and Coppinger reached any agreement with respect to TCG's continuing to do business with TTM. Coppinger denied that he ever asked Hicks, or anyone else, not to do business with TTM.

3. March 1997: 2000 Market Street site

TTM successfully bid for a contract with TCG to build a conduit system at 2000 Market Street in the city of Philadelphia. TTM was retained to perform two services at the site: to pull cable into the building and to build conduit inside the building. TTM, in turn, subcontracted the inside conduit work to RTM Electric, a Local 98 contractor.

On March 21, at around 2 p.m., Scott Jennings, a 19-year-old employee of TTM, was sitting inside a TTM van parked behind 2000 Market Street. The van was clearly marked with the company name and logo printed on the side. Jennings testified that he observed a blue car come around the corner and park behind the van. Three men get out of the blue car, and Jennings saw one of the men pull out an ice pick and puncture the van's right rear tire, right front tire, and left front tire. The man looked into Jennings face, and Jennings observed his face. Jennings identified Coppinger in the hearing room as the man with the ice pick. The second of the three men smashed the front windshield on the driver's side with a slapjack where Jennings was seated, and struck the other windows in the van. When the men were finished vandalizing the van, Jennings observed them enter the rear of the building at 2000 Market Street.[5]

Coppinger testified that he went to 2000 Market Street that day because he had received a phone call from Ed Neilson, the union treasurer, that there might be an area standards violation at the site. Neilson was not called to testify. Coppinger admitted in his testimony that he arrived at the site that day in a car and that he entered the building from the rear entrance, but denied that he punctured the tires or smashed the windows of the TTM van.

Schetrompf testified that he was on the first floor of the building at 2000 Market Street, standing in the doorway to the telecommunications room, when Coppinger came down the steps that led into the area. Coppinger was accompanied by five or six men, none of whom were employed at the site. Present with Schetrompf were employees of both TTM and TCG. Coppinger approached Christian Trout, an employee of TTM, and asked to see his union card. Trout testified that he asked Coppinger to shown his union card first. One of the men with Coppinger approached Trout, put his chest against Trout's chest, pushed him against the wall and said, "[D]on't be a smartass, show him your f–king card." Coppinger then approached Schetrompf, smashed his finger into Schetrompf's chest and pushed him through the doorway stating, "[Y]ou son of a bitch, I told you you can't work in this city. This is my building." He asked Schetrompf to identify his employees and Schetrompf pointed out the TTM employees and said they were members of Local 1448. Coppinger then asked who the other two men were and Schetrompf told him they were employees of TCG. Cop-

[2] In connection with this case the General Counsel filed a petition for (l) injunctive relief in the U.S. District Court, Eastern District of Pennsylvania on November 5 and on November 14 the court entered an order granting a temporary injunction.

[3] In connection with this case the General Counsel filed a petition for 10(l) injunctive relief in the U.S. District Court, Eastern District of Pennsylvania on November 25 and on December 5 Respondent entered into a consent decree.

[4] Prior to June 1, TCG was known as Eastern Telelogic Corporation (ETC).

[5] Coppinger was subsequently charged with assault and criminal mischief. He was acquitted after a nonjury trial in the Municipal Court of Philadelphia.

pinger said to Schetrompf that he was working with nonunion people, and he ordered Schetrompf, TTM's employees and TCG's employees to "get the f—k out of my building. This is my building. Everybody get the f—k out of here." The same man who pushed Trout approached Schetrompf and Schetrompf asked him his name. He identified himself as Jimmy Mink and then chest butted Schetrompf against the wall, stating that Schetrompf shouldn't "f—king worry about it, it was none of [his] business."

On direct examination, Coppinger testified that he went down the stairs and passed by employees of RTM who were members of Local 98. Among those accompanying Coppinger were Jimmy Mink and Nielson. The RTM employees directed Coppinger and his group to the telecommunications room. Coppinger walked over and asked several employees for whom they were working, and the men responded they were working for TCG. As Coppinger was speaking with these employees, he observed Schetrompf approaching from his left. Coppinger testified that he immediately put his hands up in a defensive posture and Schetrompf came close enough to make contact with his hands. Schetrompf asked Coppinger what was going on and Coppinger told Schetrompf that it was a union matter and that he was talking to the TCG people about their wages and benefits. On cross-examination, Coppinger was asked why he carded TTM's and TCG's employees and he responded, "[T]o make sure they're members of the Union." Coppinger said that since Local 98 had previously had a problem with TTM using non-IBEW members, he was there to check the union cards of TTM's employees as well as TCG's employees. If he had found TTM's employees were not members of Local 1448, he would have reported that fact to his sister local. Coppinger also testified that he told Schetrompf that to do work in the city of Philadelphia, TTM needed a business privilege license and that TTM was in violation of the city code. Coppinger denied smashing his finger into Schetrompf chest or threatening him.

Immediately after the physical confrontation Hicks received a phone call from the building manager, and as a result of that phone call, Hicks paged one of the TCG employees at the site. The employee called Hicks and told him that there were some people from Local 98 who were telling TCG employees that they could not work at the site. Hicks asked the employee if Coppinger were there and the employee said yes. Coppinger got on the phone and Hicks testified that he asked Coppinger what was going on. Coppinger responded by asking, "[W]hat are these people doing here?" Hicks asked whom Coppinger meant, and Coppinger said TTM and again asked why they were on the site. Coppinger told Hicks that he thought they had an agreement that TTM would not perform work for TCG. Hicks explained that the work had been divided between TTM's employees represented by Local 1448 and RTM's employees represented by Local 98. Coppinger said that didn't matter because TTM was not allowed to work anywhere in Local 98's jurisdiction. Coppinger reiterated his complaints that TTM was dirty, didn't pay their people right, and didn't have proper licenses or insurance. Coppinger did not testify with respect to this conversation with Hicks.

Schetrompf testified that he observed Coppinger speaking on the telephone with Hicks, and when he was finished speaking Coppinger handed the phone to Schetrompf. Hicks told Schetrompf that he had thought Schetrompf was going to use Respondent's members at the site. Schetrompf explained that he was using RTM, a Local 98 contractor, for some of the work, but that TTM was installing the fiber optic cable. Hicks said he understood and would speak to Schetrompf later. Schetrompf handed the phone back to Coppinger.

Following this incident on March 21, Schetrompf testified that the amount of business TTM received from TCG declined. Hicks testified that from March to October 1997 the management team of TCG decided that TCG would not do business with TTM anywhere within the city limits of Philadelphia, the area of Local 98's jurisdiction.

4. October 1997: Horsham site

In October 1996, a company called Next Level Systems began building new corporate headquarters in Horsham, Pennsylvania. Driscoll Electrical Company (Driscoll) was the construction manager at the site, and George Schaefer was the senior project manager for Driscoll. Next Level Systems required that all contractors working on the project be signatory to collective-bargaining agreements with labor unions. In October 1997, Next Level Systems contracted with TCG to perform work at the site, and TCG, in turn, retained TTM to install an electrical cabinet and to pull cable from the cabinet.

On October 27, Kevin Harris, a TTM technician, arrived at the Horsham site and was met by two TCG employees, Norm and Bob. The three men unloaded an electrical cabinet and Bob left. Shortly thereafter, Anthony Iuliano approached Harris and Norm and identified himself as the Local 98 steward on the job. Iuliano asked Harris for his union card, and Harris showed him his Local 1448 membership card. Iuliano then asked Harris to show him a receipt for his union dues, but Harris said he did not have it with him. Iuliano asked Norm for his union card and the employee said he was not a union member. Iuliano showed Harris and Norm where the electrical room was located and indicated that they could proceed with their work. Harris and Norm installed the cabinet and were about finished with the work when Iuliano entered the electrical room. Iuliano said that he had just gotten off the phone with Coppinger and that Coppinger had told him to ask them to leave the site. Both Harris and Norm stopped working and performed no further work that day. Iuliano was not called to testify.

Later that day, Gene Leahy, director of inside plant operations for TCG, received a call from one of his technicians who told him that TCG had to leave the site. Leahy telephoned Coppinger and asked him what the problem was. Coppinger said he was not aware of a problem at the Horsham site, but would look into the matter.

Schaefer was also informed on October 27 that employees had been asked to leave the site and he too telephoned Coppinger. Coppinger told Schaefer that the people who had been questioned by Iuliano were the nonunion employees of TTM. Coppinger explained that TTM was not recognized by Local 98 as a union contractor and stated that there were Local 98 contractors who could perform the same work performed by TTM. Later that evening, Schaefer telephoned Coppinger again. Coppinger repeated that there were other contractors that the Union recognized that could do TTM's work and he read off a list of these contractors to Schaefer. Schaefer wrote down the names and telephone numbers of the Local 98 contractors and Coppinger said that if one of these contractors was used, there would be no further problems.

On October 28, Leahy spoke with Coppinger by phone. Coppinger said there was a wage and standards issue. He also

said that Horsham was a union job and that it was required that union employees complete TCG's work. Coppinger did not make any specific reference to TTM. Following this telephone conversation, Leahy immediately contacted Hicks and Hicks called Coppinger. Hicks began the conversation by asking Coppinger, "[W]hat have we done to you now?" Coppinger said it was the same old thing, that TCG was using nonunion, non-Local 98 people to do work in Philadelphia. Hicks said that he was under a deadline to get new equipment installed and cut into an active network and that TCG had to do the work. Coppinger said that Local 98 had people who could do the work and he named two companies, Fiberspec and Atlantic Coastcom. Coppinger suggested that Hicks contact these companies and said that he would call Iuliano and make sure that TCG would have no problems at the site as long as they had Local 98 people working for them. TCG retained the services of Fiberspec and terminated TTM's services at Horsham. After TTM left the site and Fiberspec was on the job working with TCG's employees, there were no further incidents between TCG and Respondent.

Local 98 job stewards are appointed by the business manager and their duties are defined in the Union's bylaws. Among the responsibilities charged to job stewards are the following: (1) to see that union membership is encouraged and that all workers have paidup dues receipts or valid working cards of Local 98; (2) to report any encroachment upon the jurisdiction of Local 98; (3) to report to the business manager any violation of the Union's laws, agreements, or rules; and (4) to perform such other duties as may be assigned to them by the business manager. Coppinger testified that he expects his job stewards to follow all the provisions of the bylaws and that the stewards regularly carry out these responsibilities.

5. December 1997: Meeting at Respondent's headquarters

On December 23, Schetrompf met with John Dougherty and Coppinger at Respondent's headquarters. Coppinger told Schetrompf that if TTM wanted to do business in the city of Philadelphia, that TTM's employees would have to join Local 98. Schetrompf said he didn't know if he could do that because his men would have to make that decision and they were already in a union, Local 1448. Coppinger commented that Ed Dash, the business manager of Local 1448, makes more money than Coppinger and was, in Coppinger's opinion, "scum."

Dougherty said that Local 98 donates a lot of money to charities and has a lot of influence in the city of Philadelphia and with the mayor of the city. After the meeting, Schetrompf sent Dougherty and Coppinger a $200 gift certificate, which was returned to him.

Analysis

1. The 8(b)(1)(A) allegations

The General Counsel alleges four incidents which occurred on March 21 at the 2000 Market Street site as violative of Section 8(b)(1)(A): first, the vandalizing of the TTM van by Coppinger and another male in Coppinger's presence; second, the pushing of employee Trout by Mink in Coppinger's presence; third, Coppinger's physical assault of Schetrompf in the presence of employees; and fourth, Mink's physical assault of Schetrompf in the presence of employees. For the reasons set forth here, I agree with the General Counsel's position and find that all four incidents violated the Act.

With respect to the vandalism of the TTM van, the issue is one of pure credibility. Scott Jennings testified that he observed Coppinger puncture the tires of the van with an ice pick in broad daylight. Jennings impressed me as an honest, straightforward, and entirely credible young man. He did not hesitate when called on by counsel for the General Counsel to make an in-court identification of Coppinger. Under all the circumstances of this case, this was a daunting request of a 19 year-old, and Jennings' unequivocal response was persuasive. I credit Jenning's testimony in its entirety. Respondent, on the other hand, argues in its brief that "Coppinger is neither as bold nor as stupid as Jennings paints him to be." I disagree. Having observed Coppinger during the course of his testimony, I found him to be all that and more. He parried with counsel for the General Counsel throughout cross-examination. He carefully admitted to so much of the events and conversations testified to by the General Counsel's witnesses that did not violate the Act, and denied every portion of their testimony that did violate the Act. In contrast to Jennings, I find Coppinger's testimony was motivated purely by self-interest and the interests of Respondent. I therefore do not credit any portion of Coppinger's testimony unless specifically indicated.

Coppinger admitted that he arrived at 2000 Market Street on March 21 by car and that he entered the building through the rear entrance. This testimony is corroborative of the testimony of Jennings and Schetrompf regarding Coppinger's arrival and entrance into the building that day. Coppinger's generalized denial that he did not puncture the van's tires or observe anyone in his presence smash or strike the windows of the van is not credible. I therefore find, based on the credible testimony of Jennings, that Respondent, by its agent Coppinger, violated Section 8(b)(1)(A) by puncturing the tires of TTM's van at a time when employee Jennings was present in the van. *Hospital Employees District 1199 (J. J. Jordan Geriatric Center)*, 312 NLRB 90, 98 (1993). I further find that the smashing of the front windshield and the striking of the van's windows by a male in Coppinger's presence also violated Section 8(b)(1)(A). The credible testimony is that this individual arrived in the same car as Coppinger and damaged the van's windows in Coppinger's presence and contemporaneous with Coppinger's own acts of vandalism. When misconduct takes place in the presence of a union agent who does nothing to disavow it or to discipline the offenders, a union assumes responsibility for the conduct. *Dover Corp.,* 211 NLRB 955, 957 fn. 3 (1974).

That Coppinger was subsequently charged, tried, and found not guilty of the crime of criminal mischief in relation to this incident is not relevant and I draw no inference from these facts either for or against Respondent. *Teamsters Local 812 (Pepsi-Cola Newburgh Bottling Co.),* 304 NLRB 111, 117–118 (1991).

The second act of misconduct alleged as violative of Section 8(b)(1)(A) involves the pushing of employee Christian Trout by an individual identified by name as Jimmy Mink. Initially, it must be noted that Mink, an admitted agent of Respondent, was not called by Respondent to rebut the testimony of the General Counsel's witnesses identifying Mink as the culprit. Coppinger's testimony that Mink does not match the physical description given by Trout is not credible. Moreover, Coppinger admitted that Mink was with him that day at the site. I therefore find that together, these facts establish that Respondent, by Mink, violated the Act by pushing employee Trout against a wall. Even if I were to adopt Respondent's argument that the

evidence is insufficient to establish that Mink was the person who shoved Trout, I would still find Respondent responsible for violating the Act in this regard. The male who shoved Trout arrived with Coppinger and at all times remained in Coppinger's presence. Immediately after Coppinger demanded to see Trout's union card and Trout resisted, the man shoved Trout, told him not to be a smartass, and ordered Trout to show Coppinger his card. At no time did Coppinger disavow these actions and Respondent is therefore responsible. *Dover Corp*., supra.

The third act of misconduct involves Coppinger's smashing his finger into the chest of Schetrompf in the presence of TTM and TCG employees. Once again, I credit the testimony of Schetrompf over that of Coppinger. From the moment Coppinger arrived at 2000 Market Street, he was the aggressor. Immediately on his arrival, Coppinger punctured the tires of the marked TTM van. On entering the building, he demanded to see union membership cards of TTM's employees and when his request was met with the most minimal of resistance by Trout, Coppinger's associate shoved Trout against a wall. It is consistent with all of the evidence in this case and far more probable that Coppinger made physical contact with Schetrompf, not the other way around. I reject Respondent's argument that since Coppinger is physically smaller than Schetrompf, Coppinger could not have been the aggressor. The eyewitness accounts establish that Coppinger was accompanied by no less than two and possibly by as many as six men.

As stated previously, that Coppinger was subsequently charged, tried, and found not guilty of the crime of assault in relation to this incident is not relevant and I draw no inference from these facts either for or against Respondent. *Teamsters Local 812 (Pepsi-Cola Newburgh Bottling Co.),* supra.

Finally, I find the chest bumping of Schetrompf by Mink, in Coppinger's presence and in the presence of employees violated Section 8(b)(1)(A) of the Act.

2. The 8(b)(4)(i) and (ii)(B) allegations

a. 2000 Market Street site

Section 8(b)(4)(i) and (ii)(B) provides that,

> It shall be an unfair labor practice for a labor organization or its agents
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> . . . .
>
> (4)(i) to engage in, or to induce or encourage any individual employed by any person engaged in commerce or in an industry affecting commerce to engage in, a strike or a refusal in the course of his employment to use, manufacture, process, transport, or otherwise handle or work on any goods, articles, materials, or commodities or to perform any services; or (ii) to threaten, coerce, or restrain any person engaged in commerce or in an industry affecting commerce, where in either case an object thereof is—
>
> . . . .
>
> (B) forcing or requiring any person to cease using, selling, handling, transporting, or otherwise dealing in the products of any other producer, processor, or manufacturer, or to cease doing business with any other person, or forcing or requiring any other employer to recognize or bargain with a labor organization as the representative of his employees unless such labor organization has been certified as the representative of such employees under the provisions of section 9; *Provided,* That nothing contained in this clause (B) shall be construed to make unlawful, where not otherwise unlawful, any primary strike or primary picketing[.]

The statute does not speak generally of secondary boycotts, but describes and condemns specific union conduct directed to specific objectives. Conduct that might arguably be found to fall within the broad concept of secondary boycott is not necessarily prohibited. For example, a boycott voluntarily engaged in by a neutral employer for his own business reasons is not an unfair labor practice. Likewise, a union is free to approach a neutral employer to persuade him to engage in a boycott, so long as it refrains from the specifically prohibited forms of conduct. *Carpenters Local 1976 (Sand Door) v. NLRB,* 357 U.S. 93, 98–99 (1958). Two separate inquiries are required. The first relates to the nature of the union's conduct, and the second relates to the purpose of the union's conduct. Both requirements must be satisfied to make out a violation. *Electro-Coal Transfer Corp.,* 591 F.2d 284 (5th Cir. 1979).

In this case, Respondent had a primary dispute with TTM. In November 1996, Coppinger told Hicks, whose testimony I credit, that Local 98 had a number of complaints about TTM: that TTM was "dirty," did not pay its employees properly and was not properly licensed to do business. Coppinger unequivocally told Hicks that TCG should not do business with TTM and provided him with a list of Local 98 contractors. The General Counsel does not argue, nor could he reasonably do so, that this conversation violated Section 8(b)(4) inasmuch as a union is free to approach an employer to persuade him not to do business with another employer with whom the union has a primary dispute. Nevertheless, the November 1996 conversation between Coppinger and Hicks is convincing evidence of the existence of a primary dispute between Respondent and TTM and Respondent's desire that TCG not do business with TTM.

As soon as Coppinger arrived at 2000 Market Street on March 21, he was aware of TTM's presence at the site. It is not necessary to resolve the issue of what Nielsen told Coppinger on the phone before Coppinger arrived, inasmuch as the moment he did arrive, I find that Coppinger saw the marked TTM van parked behind the building and promptly began puncturing the van's tires. Once inside the building, immediately upon seeing Schetrompf, Coppinger told him that TTM could not do business in the city of Philadelphia. Coppinger then ordered TCG's employees who were working alongside TTM's employees to "get the f—k out of my building. This is my building. Everybody get the f—k out of here." The words "induce or encourage" are broad enough to include in them every form of influence and persuasion. *Electrical Workers IBEW Local 501 (Samuel Langer) v. NLRB,* 341 U.S. 694, 701–702 (1951). It is manifest that Coppinger's words constituted inducement and encouragement of TCG's employees to engage in a work stoppage with an object of forcing their neutral employer, TCG, to cease doing business with TTM. By engaging in such conduct, Respondent violated Section 8(b)(4)(i)(B).

A more difficult issue is raised by the General Counsel's claim that Coppinger violated Section 8(b)(4)(ii)(B) during his telephone conversation with Hicks on March 21. Based on the uncontradicted and credible testimony of Hicks, I find that Coppinger told Hicks that he thought they had an agreement that TTM would not perform work for TCG. Hicks did not dispute Coppinger's assertion of the existence of such an agreement, but rather argued that some of the work had been given to RTM, a Local 98 contractor. Coppinger was not satisfied with the split of the work between TTM and RTM and

stated that TTM was "not allowed" to work anywhere in Local 98's jurisdiction. The General Counsel asserts that the use of the words "not allowed" constituted restraint and coercion of TCG.

Vague or general predictions of problems or trouble are not alone sufficient to establish threats or coercion within the meaning of Section 8(b)(4)(ii). Amorphous language has, however, been held to constitute restraint or coercion when accompanied by economic action such as strikes, picketing, or work stoppages that resolve the ambiguity. *Brown & Root, Inc.,* 10 F.3d 316 (5th Cir. 1994); *Electro-Coal Transfer Corp.,* supra. The specific language used must be viewed in the context of surrounding conduct and events. *Laborers Local 1030 (Exxon Chemical Co.),* 308 NLRB 706, 708 (1992); *Teamsters Local 82 (Champion Exposition),* 292 NLRB 794, 795 (1989); and *Carpenters District Council (Apollo Dry Wall),* 211 NLRB 291 fn. 1 (1974).

In this case, the words that TTM was "not allowed" to work anywhere in Local 98's jurisdiction, taken alone, do not in my view rise to the level of restraint or coercion. However, the inquiry does not end there. Within moments of TCG's employees being unlawfully ordered off the jobsite by Coppinger, Hicks was advised by Coppinger that TTM was "not allowed" to work anywhere in Respondent's jurisdiction. When viewed in this context, the meaning of Coppinger's words come into sharp focus: should TCG continue to do business with TTM, Respondent would engage in prohibited secondary conduct vis-à-vis TCG's employees. I find that when viewed in these circumstances, Coppinger's conduct rose to the level of restraint or coercion and violated Section 8(b)(4)(ii)(B) of the Act.

b. The Horsham site

On October 27, Respondent's job steward, Anthony Iuliano, told TCG employees to leave the Horsham site and the employees in fact left. Respondent denies the agency status of Iuliano and argues that the General Counsel did not offer sufficient evidence to establish that Iuliano had the authority to order a work stoppage. For the reasons set forth herein, I disagree with Respondent's position and find that Iuliano, as Respondent's job steward, acted as Respondent's agent when he ordered the TCG employees to leave the Horsham site.

Respondent's by-laws charge job stewards with the responsibility to ensure that all workers have paid-up dues receipts and valid working cards of Local 98 and to report any encroachment upon the jurisdiction of Local 98. The bylaws further specifically charge job stewards with the obligation to "perform such other duties as may be assigned to them by the business manager." Harris' credible and uncontradicted testimony establishes that upon his arrival at the Horsham site, Iuliano approached him, identified himself as the Local 98 job steward, and asked to see his union membership card and dues receipt. These actions plainly fell within the defined duties of job stewards. Harris further testified, without contradiction, that when Iuliano returned later in the day and ordered Harris and the TCG employee off the site, Iuliano stated that he was acting at Coppinger's direction. Iuliano's act of conveying Coppinger's directive also plainly fell within the scope of his authority as defined by Respondent's bylaws.

The evidence further establishes that Coppinger acquiesced and ratified Iuliano's work stoppage directive. In two separate conversations, the first with Schaefer on October 27 and the second with Hicks on October 28, Coppinger defended Iuliano's actions by stating that TTM was not recognized by Respondent as a union contractor and that TTM should be replaced by a Local 98 contractor. Rather than disavow Iuliano's actions, Coppinger embraced them. Coppinger told Hicks that if TCG replaced TTM with either Fiberspec or Atlantic Coastcom, both Local 98 contractors, Coppinger would call Iuliano and make sure that TCG would have no further problems at the site. Under all of these circumstances, I find that Iuliano was an agent of Respondent and was acting within the scope of his authority when he ordered the work stoppage on October 27. *Teamsters Local 456 (Louis Petrillo Corp.),* 301 NLRB 18, 23 (1991). Iuliano's actions therefore violated Section 8(b)(4)(i)(B) of the Act.

The General Counsel argues in his brief that Iuliano's conduct on October 27 also violated Section 8(b)(4)(ii)(B) because his inducement and encouragement of TCG's employees to engage in a work stoppage had the intended effect. That is, when TCG's employees walked off the job, their strike at the behest of Respondent served to threaten, restrain, and coerce TCG. The General Counsel's argument is supported by substantial Board precedent. The effective inducement or encouragement of a neutral's employees to withhold services from their employer in turn necessarily restrains and coerces the neutral employer in violation of Section 8(b)(4)(ii)(B). *Operating Engineers Local 12 (Associated Engineers),* 270 NLRB 1172, 1175 (1984); *Laborers Local 676 (E. B. Roberts Construction Co.),* 232 NLRB 388, 390 fn. 8 (1977); *Los Angeles Building Council (Sierra South Development),* 215 NLRB 288, 290 (1974); *Plumbers Local 370 (Baughan Plumbing & Heating Co.),* 157 NLRB 20, 21 (1966). Iuliano's actions therefore violated Section 8(b)(4)(ii)(B) of the Act.

I find that Respondent further violated Section 8(b)(4)(ii)(B) on October 27 and 28 during the course of Coppinger's telephone conversations with Schaefer and with Hicks. In the first conversation, Coppinger told Schaefer that if a Local 98 contractor replaced TTM there would be no further problems on the job. In the second conversation, Coppinger repeated the same message to Hicks. As in the case of the 2000 Market Street site, Coppinger's statements that there would be no further "problems" came within 24 hours of Respondent's unlawful inducement and encouragement of employees to engage in a work stoppage. In that context, I find that Coppinger's words rose to the level of restraint and coercion in violation of Section 8(b)(4)(ii)(B).

B. Granahan Electric

In September, Delran, a general contractor, began renovations on a Sears Hardware store at 77th Avenue and City Line Avenue in the city of Philadelphia. Granahan was the nonunion electrical contractor on the job, Salvino Steel & Iron Works, Inc. (Salvino) performed the steel erection work, and Buccarelli Contractors (Buccarelli) performed the cement masonry work.

On September 24, at about 3 p.m., Glenn Lindquist, Delran's job superintendent, was approached by James Farrow. The two men exchanged business cards and Farrow stated he was from Local 98. Farrow inquired who was doing the electrical work on the site and Lindquist told Farrow he would have to call the office. Farrow persisted and asked if Granahan was doing the electrical work and Lindquist said no. Farrow said Lindquist was lying and that he was going to put up a picket line right there and then. Farrow went to his car, retrieved signs, and commenced picketing at the City Line Avenue entrance to the

site. About 20 minutes later, approximately five to seven other males arrived and joined Farrow picketing at the City Line Avenue entrance. In substance, the picket signs stated that Granahan did not observe Local 98 wages. The pickets remained until 6 p.m.

Granahan continued working at the site without further picketing until Friday, October 24. At approximately 6 a.m., Farrow arrived with approximately five other individuals and they picketed at both the City Line Avenue entrance and the 77th Avenue entrance. At 6:37 a.m., the following letter was sent by Delran to Local 98's offices via facsimile transmission:

> ATTENTION: James Farrow
>
> Dear Mr. Farrow:
>
> Please be advised that separate entrances have been established at Sears Hardware Store, 7740 City Line Avenue, Philadelphia, Pennsylvania.
>
> As of 8:00 a.m. on 10/24/97, Gate P was established for the use of Granahan Electrical Contractors, Inc., their employees, delivery persons, suppliers and visitors, all of whom will use *only* Gate P. This Gate P is located on 77th Street.
>
> Gate N has been established for all other persons, including other contractors, their suppliers, employees, delivery persons and visitors. This gate N is located on City Line Avenue.
>
> The locations of Gates P and N are shown on the attached map.
>
> Please confine any picketing to Gate P according to law. Picketing at any other entrance/exit at this jobsite will be considered illegal and all appropriate action will be taken.
>
> We are taking every precaution to insure that each individual uses the proper gate. If a violation should occur, please notify us immediately so that we may correct the situation.

Between 6:30 and 7 a.m., Lindquist posted signs at the two gates, designating the City Line Avenue gate as gate N (the neutral gate) and the 77th Avenue gate as gate P (the primary gate). The gate N sign read as follows:

> Stop Gate N. The following named contractors and its subcontractors and all of their respective employees, suppliers, delivery persons and visitors may not use this entrance/exit. Granahan Electrical Contractors, Inc.

The gate P sign read:

> Stop Gate P. The following named contractors, their employees, their subcontractors, suppliers, delivery persons and visitors must use exclusively this entrance/exit and not other entrance/exit. Granahan Electrical Contractors, Inc.

After the signs were posted, Lindquist observed that the pickets continued to picket at both gates. Lindquist attempted to hand a copy of the letter and a site map to Farrow and told Farrow that the letter had just been faxed to his office. Farrow's response was, "[Y]ou bought me 'til Christmas, won't you just pay the men what they're fucking worth? And I'll do what I'm told when I'm told by my boss." Farrow refused to accept the letter from Lindquist. The pickets remained at both gates until approximately 12 p.m., a period of 5 hours after the reserved gate was established.

On Monday, October 27, the pickets returned. Farrow was observed and photographed standing at the neutral gate wearing a picket sign with the printed language turned toward his body. On the back of the picket sign, turned outward for viewing, the word "OBSERVER" was printed. Farrow stood at the neutral gate wearing this sign from 6:30 a.m. to 12:30 p.m. He was observed speaking to people entering and exiting the neutral gate although there is no evidence to establish what was said. Lindquist testified that he observed the employees of Salvino speaking with Farrow, after which the employees turned away and did not report for work. The other Local 98 pickets remained at the primary gate that day.

Farrow stood at the neutral gate from Monday, October 27, to Friday, October 31. During that time, Lindquist observed the sign around Farrow's neck flip over from time to time so that the language of the picket sign was visible. After a few days, Farrow wore a picket sign cut in half and hung from his neck, again with the word "OBSERVER" printed on the back and displayed outward for viewing.

On Friday, October 31, Lindquist videotaped Timothy Browne and Michael Hnatowsky walking into the jobsite, past a no trespassing sign, and approximately 100 yards past gate N and gate P. The two men approached one of Buccarelli's employees and asked him for his union card. The employee showed them a card from Local 654, Cement Masons. Browne asked the employee if there was a picket line, and the employee said there was no picket line for the cement masons. Hnatowsky asked the employee again if he saw a picket line. This time the employee said yes, he knew there was a picket line and that Mike Farah from Local 654 wanted him to honor it, but he couldn't honor it because he had already put too much work into the job and would be finished in a few days anyway. Hnatowsky commented that when the cement masons have a picket line, Local 98 honors it and that's OK, and appeared to be in mid-sentence when Browne quietly reminded Hnatowsky that he was on camera, and the conversation ended. According to Lindquist, the employee from Buccarelli finished his work that day but did not come back the next day or for several more days which he had been scheduled to work.

On Tuesday, November 11, Lindquist observed Farrow standing at the neutral gate with his observer sign. Lindquist observed other pickets walk slowly from the primary gate, walk to the neutral gate to where Farrow was standing, stop, speak with Farrow, turn around, and slowly walk back to the primary gate.

After the reserve gate was established, Granahan was present at the jobsite and entered and exited through the primary gate. At no time did Lindquist receive a complaint from Respondent that Granahan or any of its suppliers were violating the neutral gate.

Analysis

In applying the secondary boycott provisions of the Act, the Board must balance the interests of unions in picketing at the sites of their disputes against the interests of secondary employers to be free from picketing arising out of controversies in which they are not directly involved. Where both the primary and secondary employers are working at the same jobsite, the common job situs affects the rights of both secondary employers and the picketing unions. *Teamsters Local 83 (Allied Concrete, Inc.),* 231 NLRB 1097 (1977). In accordance with these principles, several well-established tests have been developed

for determining the legality of union picketing undertaken at a multiple employer worksite where separate entrances have been established for the use of the primary and neutral employers. The *Moore Dry Dock* test is applicable to situations where, as here, the premises on which the primary employer is working are not his own. *Oil Workers Local 1-591 (Burlington Northern Railroad),* 325 NLRB (1998).

In *Sailors' Union (Moore Dry Dock Co.),* 92 NLRB 547, 549 (1950), the Board established four criteria by which to measure the presumptive lawfulness of picketing in common situs situations. Such picketing is presumptively lawful if: (a) the picketing is strictly limited to times when the situs of the dispute is located on the secondary employer's premises; (b) at the time of the picketing the primary employer is engaged in its normal business at the situs; (c) the picketing is limited to places reasonably close to the location of the situs; and (d) the picketing discloses clearly that the dispute is with the primary employer. These standards are not applied on an indiscriminate per se basis, but are aids in determining the underlying question of statutory violation. *Electrical Workers IBEW Local 861 (Plauche Electric, Inc.),* 135 NLRB 250, 255 (1962).

Applying these standards here, the picketing conducted by Respondent on October 24 at the posted neutral gate violated Section 8(b)(4)(i) and (ii)(B). Written notification of the reserved gate was sent to Respondent by facsimile transmission at 6:37 a.m. The reserved gate signs were posted in full view of Farrow and the pickets at 7 a.m. and the letter was read aloud to Farrow at 7:15 a.m. Notwithstanding these notifications, Farrow and the pickets continued picketing at the neutral gate for 5 hours. By extending its picketing beyond the primary gate to the neutral gate, Respondent violated the third *Moore Dry Dock* criterion, which requires that picketing be limited to places reasonably close to the situs of the primary dispute. This gives rise to the presumption that Respondent's picketing at the neutral gate sought the unlawful objective of placing secondary pressure on neutral employers at the site. Farrow's statement to Lindquist that he "pay the men what they're worth" is further evidence of a secondary object. Respondent's dispute was with Granahan, not Delran, and as a neutral to the dispute, Delran was not in a position to grant wage increases to meet Respondent's area standards demands. Clearly, Respondent was picketing Delran in an effort to get Delran to cease doing business with Granahan. Respondent presented no evidence to rebut the presumption that the picketing was for an unlawful objective and I find a violation of Section 8(b)(4)(i) and (ii)(B).

The picketing conducted by Respondent also violated 8(b)(4)(i) and (ii)(B) by Farrow's positioning himself at the neutral gate with an "observer" sign. There is no allegation and indeed no evidence of misuse of the neutral gate. Farrow, called to testify by Respondent, offered no explanation of why there was a need for him to stand at the neutral gate. I find that Farrow's "observer" activity was for no other purpose than to signal employees of neutral employers. *Ironworkers Local 433 (Robert E. McKee, Inc.),* 233 NLRB 283, 287 (1977). In fact, the evidence suggests that Farrow was successful in that effort in that he was observed speaking to employees of Salvino who were attempting to enter through the neutral gate after which they turned away and did not report for work. In sum, Respondent failed to do everything reasonably necessary to insure that secondary employees were not misled or coerced into observing the picket line and thereby violated the Act. *Sheet Metal Workers Local 19 (Delcard Associates, Inc.),* 316 NLRB 426, 438 (1995).

Respondent further violated Section 8(b)(4)(i)(B) on October 31 when Browne and Hnatowsky passed both the neutral and primary gates, trespassed onto the jobsite, and asked an employee of Buccarelli contractors twice if he had seen the picket line. When the employee said he had, but could not honor it, Hnatowsky reminded the employee that Respondent always honors the Cement Mason's picket lines, suggesting that the employee should accord Respondent the same treatment. I find that these actions constituted inducement and encouragement within the meaning of Section 8(b)(4)(i)(B).

Finally, Respondent violated Section 8(b)(4)(i) and (ii)(B) when, on November 11, the pickets walked from the primary gate to the neutral gate where Farrow was standing. These actions violated the third criterion of *Moore Dry Dock* requiring that picketing be limited to places reasonably close to the situs of the primary dispute, i.e., the primary gate. As stated previously, this evidence gives rise to the presumption that Respondent's patrolling away from the primary gate and walking to the neutral gate sought the unlawful objective of placing secondary pressure on the neutral employers at the site. The only evidence presented by Respondent to rebut this presumption was Farrow's testimony denying that the pickets walked toward the neutral gate. I credit Lindquist's version over that of Farrow, and find that the pickets did in fact engage in this activity and thereby violated Section 8(b)(4)(i) and (ii)(B).

C. Carter Electric

Bock was a general contractor engaged in the construction of a low-income housing project at 1600 Diamond Street in north Philadelphia. Carter Electric was the electrical contractor on the job and one of several nonunion contractors on site. Carter Electric's employees brought their equipment each day to the site, and at the end of the day removed the equipment.

On October 1, Daniel Murphy, Bock's superintendent, advised Carter Electric that its employees could only work at the site during nonregular working hours, from 4 p.m. to 6:30 a.m. Mondays through Fridays, and anytime on Saturdays and Sundays. That same day, between 12:30 and 1 p.m., Larry Rappoport, attorney for Bock, sent a letter to Dougherty at Local 98's offices via facsimile advising him as follows:

> We represent Ernest Bock & Sons, Inc., the general contractor at the ACDC construction site at 16th and Diamond Streets. I am advised that the Electricians may have a dispute with Carter Electric, a subcontractor performing work at the job site. Carter Electric will be performing work *only* during the hours of 4 p.m. to 6:30 a.m. Monday through Friday, and on Saturdays and Sundays.
>
> Accordingly, any picketing by your Union against Carter Electric between the hours of 6:30 a.m. and 4 p.m. Monday to Friday is in violation of the *Moore Dry Dock* standards and a violation of Section 8(b)(4)(B) of the National Labor Relations Act. Should you picket during the hours that Carter Electric is not present, we will have no choice but to proceed before the NLRB and under [Section] 303 of the LMRA.

Bock established a reserved gate system. Gate A was designated to be used by Carter Electric and other nonunion contractors, all of whom were directed to work nonregular hours, and

gate B was designated to be used by the union contractors at the site.

On October 2, Murphy arrived at the site at 6:30 a.m. and he observed pickets at gate A with signs that read:

Carter Electrical is destroying
building industry standards.
We protest this - Not observing
our wages and benefit standards
Local 98 Union

At 7 a.m., Murphy began videotaping the pickets standing at gate A, and he continued to videotape their actions for discrete periods between 7 and 9:30 a.m. At 7:15 a.m., Murphy videotaped Louis Harris, an employee of Bock, reading the text of Rappoport's letter to the assembled pickets, including Harry Foy, an admitted agent of Respondent. Harris stood several feet from Foy and read the text of the letter in a clear, loud voice. Foy kept his back to Harris throughout the reading. When Harris was done reading the letter, he walked over to Foy and attempted to hand him the letter. Foy walked away with his hands in his pockets. The pickets remained at the site until 9:30 a.m. At no time from 6:30 until 9:30 a.m. was Carter Electric's employees or equipment present at the site.

Analysis

The *Moore Dry Dock* test is applicable to situations where, as here, the premises on which the primary employer is working are not his own. *Oil Workers Local 1-591 (Burlington Northern Railroad),* supra. Respondent's picketing at the primary gate on the morning of October 2, after it was on notice that Carter Electric was not present at the site, violated the first criterion of *Moore Dry Dock* requiring that picketing be strictly limited to times when the primary employer is present at the secondary employer's premises.

Respondent argues that there is no evidence that Dougherty actually read the faxed notification sent by Rappoport to Respondent's offices on October 1 and therefore, there is no proof that Respondent was on notice of Carter Electric's absence from the site until after the picketing commenced on October 2. Respondent's argument is without merit for two reasons. First, I draw an adverse inference from Respondent's failure to call Dougherty to testify whether he read the letter on October 1. Dougherty was still in Respondent's employ at the time of the hearing and in fact appeared at the hearing. (Tr. 319.) The failure to call him therefore leads me to infer that had he testified, his testimony would have been adverse to Respondent's position. See *International Automated Machines, Inc.,* 285 NLRB 1122 (1987). Second, the Board has recognized that fax transmission is an effective means of communication. The evidence establishes that Respondent maintains a fax machine as a regular means of communication and that the letter was received in Respondent's office on October 1 during regular business hours. Respondent therefore bears the responsibility for maintaining adequate office procedures concerning fax transmissions, and knowledge of the receipt of the letter during regular office hours may reasonably be imputed to it. *Clow Water Systems Co.,* 317 NLRB 126 (1995). See *also Iron Workers Local 433 (Robert E. McKee, Inc.),* supra at 287 (knowledge chargeable upon receipt of telegram at business office).

In any event, Respondent's counsel conceded at the hearing that as of 7:15 a.m. on October 2, Respondent was on notice of Carter Electric's absence from the site: "That's right, from 7:15 on there is in fact that notice—of course it's read to someone who is ignoring it." (Tr. 268.) Respondent nevertheless argues that the continuation of the picketing after receiving notice, from 7:15 to 9:30 a.m., should be dismissed as a de minimis violation of the law. Respondent's argument is without merit and I find, based on all of the circumstances, that Respondent violated Section 8(b)(4)(i) and (ii)(B) on October 2.

CONCLUSIONS OF LAW

1. The Telephone Man, Inc., Delran Builders Company, Inc., Ron Carter & Associates, Inc., Granahan Electrical Contractors, Inc., and TCG Delaware Valley, Inc. are each employers engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

2. Driscoll Electrical Company, Salvino Steel & Iron Works, Inc., Buccarelli Contractors and Ernest Bock & Sons, Inc. are persons within the meaning of Section 2(1) of the Act.

3. Respondent International Brotherhood of Electrical Workers, Local 98, AFL–CIO is a labor organization within the meaning of Section 2(5) of the Act.

4. Respondent, by Coppinger, violated Section 8(b)(1)(A) on March 21, 1997 by:

(a) Puncturing the tires of a van owned by TTM in the presence of an employee.

(b) Physically assaulting an employer in the presence of employees.

5. Respondent, by Mink and Coppinger, violated Section 8(b)(1)(A) on March 21 by:

(a) Physically pushing an employee against a wall.

(b) Physically pushing an employer against a wall in the presence of employees.

6. Respondent, by Coppinger, violated Section 8(b)(4)(i)(B) on March 21, 1997, by inducing and encouraging employees of TCG to engage in a work stoppage with an object of forcing TCG to cease doing business with TTM.

7. Respondent, by Coppinger, violated Section 8(b)(4)(ii)(B) on March 21, 1997, by threatening, coercing, and restraining TCG with an object of forcing TCG to cease doing business with TTM.

8. Respondent, by Iuliano, violated Section 8(b)(4)(i) and (ii)(B) on October 27, 1997, by inducing and encouraging employees of TCG to engage in a work stoppage and by the employees engaging in a work stoppage with an object of forcing TCG to cease doing business with TTM.

9. Respondent, by Coppinger, violated Section 8(b)(4)(ii)(B) on October 27, 1997, by threatening, coercing, and restraining Driscoll with an object of forcing TCG to cease doing business with TTM.

10. Respondent, by Coppinger, violated Section 8(b)(4)(ii)(B) on October 28, 1997 by threatening, coercing, and restraining TCG with an object of forcing TCG to cease doing business with TTM.

11. Respondent violated Section 8(b)(4)(i) and (ii)(B) from on or about October 24 to November 11, 1997, by picketing at a posted neutral gate with an object of forcing Delran to cease doing business with Granahan.

12. Respondent, by Browne and Hnatowsky, violated Section 8(b)(4)(i)(B) on October 31 by inducing and encouraging an employee of Buccarelli to engage in a work stoppage with an object of forcing Delran to cease doing business with Granahan.

13. Respondent violated Section 8(b)(4)(i) and (ii)(B) on October 2, 1997, by picketing at a jobsite at a time when Respondent knew or had reason to know that Carter Electric was not present at the job site with an object of forcing Bock to cease doing business with Carter Electric.

14. Respondent has engaged in unfair labor practices affecting commerce within the meaning of Section 8(b)(1)(A), (4)(i), and (ii)(B) and Section 2(6) and (7) of the Act.

REMEDY

Having found that the Respondent has engaged in certain unfair labor practices, I find that it must be ordered to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act.

The General Counsel seeks a broad order requiring Respondent to cease and desist from any conduct prohibited by Section 8(b)(4)(i)(B) or (ii)(B) of the Act.[6] The request is premised on the facts of the instant case as well as the facts underlying previous cases involving Respondent, which were the subject of a Board order enforced by the Court of Appeals for the Third Circuit. For the reasons set forth here, I recommend that such a broad order issue.

On April 30, 1996, the Regional Director for Region 4 issued a complaint in Cases 4–CB–7678 and 4–CC–2114 against Respondent alleging that Bell Atlantic Pennsylvania, Inc. (Bell) engaged Lucent Technologies, Inc. (Lucent) to install a switching machine at a Bell facility in Philadelphia. The complaint further alleged that on March 18, 1996, Respondent picketed at the Bell facility with an object of forcing Bell to cease doing business with Lucent.

On May 3, 1996, the Regional Director for Region 4 issued a complaint in Cases 4–CC–2116 and 4–CB–7688 against Respondent alleging that Home Depot engaged Intech Construction, Inc. (Intech) as a general contractor and Lucent as a telecommunications wiring contractor at a store located in Clifton Heights, Pennsylvania. The complaint further alleged that on April 1, 1996, Dougherty threatened Home Depot and Intech with picketing, and that on April 4, 1996, Respondent engaged in picketing, with an object of forcing Intech to cease doing business with Home Depot in order to force Home Depot to cease doing business with Lucent.

On August 22, 1996, the Regional Director for Region 4 issued a complaint in Cases 4–CC–2125, 4–CB–7736, and 4–CC–2126 against Respondent alleging that Sprint, Inc. (Sprint) engaged Lucent to install a switching system at a Sprint facility in Philadelphia. The complaint further alleged that on July 23, 1996, Respondent picketed this facility with an object of forcing Sprint to cease doing business with Lucent.

On June 24, 1997, Respondent entered into a settlement stipulation, subject to the Board's approval, providing for the entry of a consent order by the Board and a consent judgment by any appropriate United States Court of Appeals. On July 18, 1997, the Board issued a decision and order approving this stipulation, and on November 25, 1997, the United States Court of Appeals for the Third Circuit issued a judgment enforcing the Board order.

Paragraph 8 of the settlement stipulation provided as follows:

> It is understood that the signing of this Stipulation by the Respondent does not constitute an admission that it has violated the Act. However, Respondent agrees that for the purpose of determining the proper scope of an order to be entered against it in any future proceeding before the Board or a Court in which the Board or its General Counsel is a party, the Board Order and Court Judgment issued pursuant to this Stipulation shall have the same force and effect as a litigated adjudication of the Board enforced by a United States Court that Respondent engaged in the conduct alleged in Complaints One through Three.

The General Counsel relies on Respondent's conduct in these prior cases to support its application for a broad remedial order and I find that such reliance is appropriate. The nonadmissions clause in paragraph 8 is not paramount to the express language reserving to the General Counsel the right to rely on the underlying conduct for the purpose of determining the scope of a future Board order. *Teamsters Local 70 (Department of the Navy),* 261 NLRB 496, 502–503 (1982). The course of conduct engaged in by Respondent since April 1996 is therefore properly considered.

From April to August 1996, Respondent's agents engaged in illegal secondary activity involving four separate neutral employers (Bell, Home Depot, Intech, and Sprint) and engaged in picketing and threats to picket at three separate facilities in the Philadelphia area. In March 1997, Respondent engaged in illegal secondary activity involving two neutral employers (TCG and Driscoll) at two different job sites in the Philadelphia area and successfully induced employees to engage in a work stoppage at one of these sites. In October and November 1997, after the execution of the settlement stipulation, Respondent engaged in illegal secondary activity involving four neutral employers (Delran, Buccarelli, Salvino, and Bock) and engaged in picketing at two different jobsites in the Philadelphia area. In sum, Respondent's unlawful actions toward 10 separate neutral employers in a 19-month period, involving picketing, threats to picket, and work stoppages at six locations in the Philadelphia area, demonstrates Respondent's proclivity for violating the Act and its general disregard for the fundamental rights of employees and neutral employers. A narrow order, confined to the instant case, would not sufficiently deter further misconduct. I therefore recommend that the Board issue a broad order requiring the Respondent to cease and desist from infringing in any other manner on rights guaranteed employees by Section 7 of the Act. *Iron Workers Local 378 (N.E. Carlson Construction),* 302 NLRB 200 (1991); *Hickmott Foods,* 242 NLRB 1357 (1979).

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended[7]

ORDER

The Respondent, International Brotherhood of Electrical Workers, Local 98, AFL–CIO, its officers, agents, and representatives, shall

1. Cease and desist from

[6] The General Counsel does not seek a broad remedial order with respect to conduct prohibited by Sec. 8(b)(1)(A).

[7] If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.

(a) Restraining or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act by damaging property owned by The Telephone Man, Inc. or any other employer.

(b) Restraining or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act by physically assaulting them.

(c) Restraining or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act by physically assaulting any representative of The Telephone Man, Inc. or any other employer.

(d) In any manner inducing or encouraging individuals employed by TCG Delaware Valley, Inc., or any other person engaged in commerce or in an industry affecting commerce, to refuse in the course of their employment to perform any services where an object thereof is to force or require TCG Delaware, Inc. or any other person to cease doing business with The Telephone Man, Inc., or with any other person.

(e) In any manner threatening, coercing, and restraining TCG Delaware Valley, Inc., Driscoll Electrical Company, or any other person engaged in commerce or in an industry affecting commerce, where an object thereof is to force or require TCG Delaware Valley, Inc., Driscoll Electrical Company, or any other person to cease doing business with The Telephone Man, Inc., each other, or with any other person.

(f) In any manner inducing or encouraging individuals employed by Delran Builders Company, Inc., Buccarelli Contractors, Salvino Steel & Iron Works, Inc., or any other person engaged in commerce or in an industry affecting commerce, to refuse in the course of their employment to perform any services where an object thereof is to force or require Delran Builders Company, Inc., Buccarelli Contractors, Salvino Steel & Iron Works, Inc., or any other person to cease doing business with Granahan Electrical Contractors, Inc., each other, or with any other person.

(g) In any manner threatening, coercing, and restraining Delran Builders Company, Inc. or any other person engaged in commerce or in an industry affecting commerce, where an object thereof is to force or require Delran Builders Company, Inc. or any other person to cease doing business with Granahan Electrical Contractors, Inc., or with any other person.

(h) In any manner inducing or encouraging individuals employed by Ernest Bock & Sons, Inc., or any other person engaged in commerce or in an industry affecting commerce, to refuse in the course of their employment to perform any services where an object thereof is to force or require Ernest Bock & Sons, Inc., or any other person to cease doing business with Ron Carter & Associates, Inc., or with any other person.

(i) In any manner threatening, coercing, and restraining Ernest Bock & Sons, Inc., or any other person engaged in commerce or in an industry affecting commerce, where an object thereof is to force or require Ernest Bock & Sons, Inc., or any other person to cease doing business with Ron Carter & Associates, Inc., or with any other person.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Within 14 days after service by the Region, post at its business offices and all meeting halls located in the State of Pennsylvania copies of the attached notice marked "Appendix."[8] Copies of the notice, on forms provided by the Regional Director for Region 4, after being signed by the Respondent's authorized representative, shall be posted by the Respondent immediately upon receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to members are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material.

(b) Within 14 days after service by the Region, mail a copy of the attached notice marked "Appendix" to all of its members. The notice shall be mailed to the last known address of each member after being signed by the Respondent's authorized representative.

(c) Sign and return to the Regional Director sufficient copies of the notice for posting by The Telephone Man, Inc., Ernest Bock & Sons, Inc., Delran Builders Company, Inc., Ron Carter & Associates, Inc., Granahan Electrical Contractors, Inc., TCG Delaware Valley, Inc., Driscoll Electrical Company, Salvino Steel & Iron Works, Inc., and Buccarelli Contractors, if willing, at all places where notices to employees are customarily posted.

(d) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

WE WILL NOT restrain or coerce employees in violation of the rights guaranteed them by Section 7 of the Act by damaging property owned by the Telephone Man, Inc., or any other employer.

WE WILL NOT restrain or coerce employees in the exercise of the rights guaranteed them by Section 7 of the Act by physically assaulting them.

WE WILL NOT restrain or coerce employees in the exercise of the rights guaranteed them by Section 7 of the Act by physically assaulting any representative of The Telephone Man, Inc. or any other employer.

WE WILL NOT in any manner induce or encourage individuals employed by TCG Delaware Valley, Inc., or any other person engaged in commerce or in an industry affecting commerce, to refuse in the course of their employment to perform any services where an object thereof is to force or require TCG Delaware, Inc., or any other person to cease doing business with The Telephone Man, Inc., or with any other person.

WE WILL NOT in any manner threaten, coerce, or restrain TCG Delaware Valley, Inc., Driscoll Electrical Company, or any other person engaged in commerce or in an industry affecting commerce, where an object thereof is to force or require TCG Delaware Valley, Inc., Driscoll Electrical Company, or

[8] If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted and mailed by Order of the National Labor Relations Board" shall read "Posted and mailed Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

any other person to cease doing business with The Telephone Man, Inc., each other, or with any other person.

WE WILL NOT in any manner induce or encourage individuals employed by Delran Builders Company, Inc., Buccarelli Contractors, Salvino Steel & Iron Works, Inc., or any other person engaged in commerce or in an industry affecting commerce, to refuse in the course of their employment to perform any services where an object thereof is to force or require Delran Builders Company, Inc., Buccarelli Contractors, Salvino Steel & Iron Works, Inc., or any other person to cease doing business with Granahan Electrical Contractors, Inc., each other, or with any other person.

WE WILL NOT in any manner threaten, coerce, or restrain Delran Builders Company, Inc., or any other person engaged in commerce or in an industry affecting commerce, where an object thereof is to force or require Delran Builders Company, Inc., or any other person to cease doing business with Granahan Electrical Contractors, Inc., or with any other person.

WE WILL NOT in any manner induce or encourage individuals employed by Ernest Bock & Sons, Inc., or any other person engaged in commerce or in an industry affecting commerce, to refuse in the course of their employment to perform any services where an object thereof is to force or require Ernest Bock & Sons, Inc., or any other person to cease doing business with Ron Carter & Associates, Inc., or with any other person.

WE WILL NOT in any manner threaten, coerce, or restrain Ernest Bock & Sons, Inc., or any other person engaged in commerce or in an industry affecting commerce, where an object thereof is to force or require Ernest Bock & Sons, Inc., or any other person to cease doing business with Ron Carter & Associates, Inc., or with any other person.

INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS, LOCAL 98, AFL–CIO